DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)), hereby gives notice of the adoption of a new Section 995 of Title 29 of the District of Columbia Municipal Regulations ("DCMR"), entitled "Medicaid Physician and Specialty Services Rate Methodology." This rule will establish a new rate methodology that would increase Medicaid reimbursement for physician and specialty services.

The District's Medicaid Program has been unable to attract physicians with medical specialties because of low reimbursement rates. Many Medicaid beneficiaries, despite the opportunities that accompany the program, cannot be treated because of the insufficient number of physician providers participating in the District's Medicaid Program. The Medicaid Program projects total annual expenditures of $11.34 million as a result of the proposed change in the fee schedule for physician and specialty services.

The District of Columbia Medicaid Program also is modifying the State Plan for Medicaid Assistance ("State Plan") to reflect these changes. Each State Plan Amendment ("SPA") must be approved by the Council of the District of Columbia ("Council") and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS"). The Council approved the SPA on August 15, 2008 by PR 17-937. CMS approved the SPA with an effective date of April 25, 2009.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 24, 2009 (56 DCR 003216). Comments were received and no substantive changes have been made. Section 995.1 has been amended to clarify the effective date set forth in CMS' approval of the corresponding SPA. This rulemaking will become effective upon publication of this notice in the *DC Register*.

Chapter 9 of Title 29 of the DCMR is amended by adding a new Section 995 to read as follows:

995 MEDICAID PHYSICIAN AND SPECIALTY SERVICES RATE METHODOLOGY

995.1 Effective April 25, 2009, Medicaid reimbursement rates for fee-for-service physician and specialist services shall be consistent with the rates paid by the Medicare Program as set forth in this section.

995.2 For services where the physician and specialist service procedure code falls within the Medicare (Title XVIII) fee schedule, payment shall be the lesser of the Medicare rate or the providers' actual charges to the general public.

995.3 For services where the procedure code does not fall within the Medicare fee schedule, an alternative method, as set forth in § 995.4, shall be used to establish the Medicaid reimbursement rate.

995.4 When making a determination to establish the Medicaid reimbursement rate using an alternative method for physician and specialty services, in addition to using professional judgment, the following factors may be considered:

(a) Practitioner fees;
(b) Fee schedules from other states;
(c) Similar procedures with established fees; or
(d) Private insurance payments.

995.5 Beginning Fiscal Year 2010, and annually thereafter, all rates for physician and specialty services shall be updated on January 1st pursuant to the rate schedules in effect on the first day of the District of Columbia fiscal year or October 1st.

995.6 All physician and specialty services reimbursement rates shall be located on the Department of Health Care Finance website.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02) and section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)), hereby gives notice of the adoption of an amendment to Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). This final rulemaking amends subsection 996 (Provider of Durable Medical Equipment, Prosthetics, and Orthotics Supplies) and subsection 999 (Definitions) as published in the *D.C. Register* at pages 6153 through 6158 of Volume 55 on May 30, 2008.

The rulemaking would establish new provider requirements regarding the amount and number of surety bonds required for providers, submitting a CMS Medicare Supplier Letter, conditions for enrollment, and extending privacy to Medicaid beneficiaries when fitting appliances. The rulemaking would also change the name of the entity responsible for administration of the D.C. Medicaid Program from the now-abolished Medical Assistance Administration within the Department of Health to the newly-established Department of Health Care Finance. The Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services previously conducted an interview and questionnaire to determine the standards used by the District of Columbia (District) when enrolling Durable Medical Equipment, Prosthetics, and Orthotics Suppliers (DMEPOS) providers, the extent to which the District verifies these standards during the enrollment process, and the extent to which the District re-enrolls Medicaid DMEPOS providers. As a result of the OIG's findings, the District continues to strengthen the management and oversight of Medicaid DMEPOS providers by establishing these rules.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 22, 2009 (56 DCR 004115). Comments on the proposed rules were received. No substantive changes to the proposed rules have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (Public Welfare) is amended as follows:

Section 996 is deleted in its entirety and amended to read as follows:

996 Provider of Durable Medical Equipment, Prosthetics and Orthotics Supplies

996.1 A provider of Durable Medical Equipment, Prosthetics, and Orthotics Supplies (DMEPOS) shall be governed by the policies and procedures located in the Provider Handbook for Durable Medical Equipment Prosthetics and Orthotics Supplies provided by the Department of Health Care Finance (DHCF).

996.2 A provider of DMEPOS shall:

(a) Operate a business that furnishes Medicare-covered items in compliance with all applicable federal and District of Columbia licensure and regulatory requirements;

(b) Be eligible to engage in DMEPOS business once the provider has participated in the Medicaid DMEPOS New Provider Training conducted by DHCF and signed a Medicaid DMEPOS Provider Agreement accepted by DHCF;

(c) Maintain a physical facility that contains space for storing business records, including the supplier's delivery, maintenance, and beneficiary communication records;

(d) Be prohibited from using a post office box as a primary business address;

(e) Be open for business at least forty (40) hours per week in a week that does not contain a holiday where DHCF is closed on a weekday and be open for business at least thirty-two (32) hours per week in a week that does contain a holiday where DHCF is closed on a weekday;

(f) Maintain a visible sign that states the name of the provider and posted hours of operation;

(g) Permit on-site inspections to be conducted by the Centers for Medicare and Medicaid Services (CMS), its agents, the Department of Health (DOH), DHCF or the agents of DOH or DHCF to determine supplier compliance with all applicable laws;

(h) Promote and maintain a beneficiary's right to privacy when services include fittings of DMEPOS;

(i) Provide patient education on the proper use of services and/or equipment;

(j) Maintain a primary business telephone number listed under the name of the business locally and, if appropriate, a toll-free telephone number for Medicaid beneficiaries. The exclusive use of a beeper number, answering service, pager, telephone line connected to a facsimile machine, or wireless telephone does not satisfy the requirement to have a primary business telephone; and

(k) Submit a document commonly known as a CMS Medicare Supplier Letter issued pursuant to 42 C.F.R. § 424.510 to evidence enrollment of the supplier in the Medicare program.

996.3 A provider shall maintain, at minimum, comprehensive liability insurance in the amount of three hundred thousand dollars ($300,000.00) and shall provide proof of such insurance to DHCF with its initial application and annually thereafter.

996.4 Each applicant and provider shall post a continuous surety bond in the amount of fifty thousand dollars ($50,000) against all DME claims, suits, judgments, or damages including court costs and attorneys fees arising out of the negligence or omissions of the provider in the course of providing services to a Medicaid beneficiary or a person believed to be a Medicaid beneficiary. The number of bonds required shall be predicated upon each provider's DME National Provider Identification Number (NPI). The DMEPOS provider categories shall be determined as follows:

(a) An existing provider who is providing services in the D.C. Medicaid program;

(b) A new applicant seeking to become a provider in the D.C. Medicaid program; or

(c) A provider who is submitting a new application to change the ownership of an existing enrolled provider, pursuant to §996.6.

996.5 A provider shall be required to re-enroll in the Medicaid DMEPOS Program at least once every three (3) years.

996.6 A provider shall be re-enrolled in the Medicaid DMEPOS Program immediately after any change in business ownership.

996.7 A provider shall be required to submit required certifications, licenses, permits or any other official information concerning the backgrounds of all employees, licensed or unlicensed, that will interact with Medicaid beneficiaries.

996.8 A provider shall submit the following information:

(a) A list of all principals of the entity;
(b) A list of all stockholders owning or controlling ten percent (10%) or more of outstanding shares;
(c) The names of all board members and their affiliations;
(d) A roster of key personnel; and
(e) An organizational chart.

996.9 A provider shall maintain all Medicaid-related records for a period of ten (10) years after the date of service or sale.

996.10 A provider shall fill orders, fabricate, or fit items from its inventory or by contracting with other companies for the purchase of items necessary to fill the order.

996.11 At the time of product delivery or service, the provider shall provide the beneficiary with a contact telephone number for assistance.

996.12 A business formed within the geographical boundaries of the District of Columbia seeking enrollment in the District of Columbia Medicaid DMEPOS Program shall be considered an in-state business.

996.13 An in-state business shall submit to DHCF a business license, if required, and a Notice of Business Tax Registration pursuant to D.C. Official Code § 47-2026 (2001).

996.14 A business formed outside of the geographical boundaries of the District of Columbia shall be considered an out-of-state business.

996.15 An out-of-state business seeking enrollment in the District Medicaid DMEPOS Program shall first be enrolled in a Medicaid program located within the state of its principal place of business.

996.16 An out-of-state business shall submit all of the following that apply:

(a) A Certificate of Authority to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-101.99 et seq. (2001) if the business is a corporation;

(b) A Certificate of Registration to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-1053 et seq. (2001) if the business is a limited liability company;

(c) The name of its registered agent for the out-of-state business along with the business address and telephone number of the registered agent;

(d) Proof of a physical business address and a business telephone number within the District of Columbia listed under the name of the business for the purpose of providing Medicaid sales and services; and

(e) The Medicaid enrollment provider number from the state where the out-of-state business' principal place of business is located.

996.17 DHCF shall review an applicant's signed and completed application within thirty (30) business days from its receipt by DHCF.

996.18 DHCF shall return a provider application package to the applicant when DHCF determines the provider application package to be incomplete or to contain incorrect information only two (2) times within a twelve (12) month period.

996.19 A DMEPOS Provider Enrollment Application may be denied due to any one or more of the following factors:

(a) The applicant has demonstrated an inability to provide services, conduct business, or operate a financially viable entity;

(b) Current availability of services or supplies for beneficiaries taking into account geographic location and reasonable travel time;

(c) Number of providers of the same type of service or supplies enrolled in the same geographic area;

(d) False representation or omission of any material fact in making the application;

(e) Exclusion, suspension, or termination from any Medicaid program;

(f) Exclusion, suspension, or termination from any program managed by DHCF;

(g) Conviction of any criminal offense relating to the delivery of any goods or services for a Medicaid beneficiary;

(h) Conviction of any criminal offense relating to fraud, theft, embezzlement, fiduciary responsibility, or other financial misconduct;

(i) Violation of federal or District of Columbia laws, rules or regulations governing the D.C. Medicaid program;

(j) Violation of federal or state laws, rules, or regulations governing a Medicaid program in another state;

(k) The applicant has been previously found by a licensing, certifying, or professional standards board to have violated the standards or conditions relating to licensure or certification of the services provided;

(l) Exclusion, suspension, or termination from any Medicare program; or

(m) DHCF has returned a provider application package to the applicant that is incomplete or contains incorrect information at least two (2) times in the past twelve (12) months.

996.20 An applicant, whose provider application has been denied, may resubmit a provider enrollment application for review and a decision.

996.21 An applicant, whose provider application has been approved to become a D.C. Medicaid DMEPOS Provider, is deemed to be enrolled when the applicant has:

(a) Successfully completed the DMEPOS Application that is approved by DHCF;

(b) Signed a District of Columbia Medicaid DMEPOS Provider Agreement that has been accepted by DHCF;

(c) Participated in a mandatory Medicaid DMEPOS New Provider Orientation conducted by DHCF or its agent; and

(d) Received the DHCF Provider Handbook for Durable Medical Equipment Prosthetics and Orthotics Supplies from DHCF or its agent.

996.22 DHCF may authorize a temporary enrollment of an applicant in the case of a special circumstance when a Medicaid beneficiary requires immediate service, supplies, or equipment, subject to the following limitations:

(a) Temporary enrollment shall be for one specific occurrence involving an identifiable Medicaid beneficiary;

(b) Temporary enrollment shall only be made available one time to a provider; or

(c) Temporary enrollment may be allowed in situations when the D.C. Medicaid Program is not the primary payer.

996.23 A temporary provider may become eligible to apply for enrollment in the District of Columbia DMEPOS Program anytime during temporary eligibility or subsequently thereafter.

996.24 DHCF may adopt and include in the provider agreement other requirements and stipulations that it finds necessary to properly and efficiently administer the D.C. Medicaid Program.

996.25 DHCF may make, or cause to be made, payments for medical assistance and related services rendered to Medicaid beneficiaries only when:

(a) The entity has a current DMEPOS Provider Agreement in effect with DHCF;

(b) The entity is performing services and supplying goods in accordance with federal and District laws; and

(c) The provider is eligible to provide the item or service on the date it is dispensed and the beneficiary is eligible to receive the item or service on the date the item or service is furnished.

996.26 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 of the District of Columbia Municipal Regulations during the provider's participation in the District Medicaid DMEPOS Program.

996.27 DHCF shall have the authority to implement a one hundred eighty (180) day moratorium on the enrollment of DMEPOS providers when the action is necessary to safeguard public funds or to maintain the fiscal integrity of the program. This moratorium may be extended or repeated when DHCF determines this action is necessary to further safeguard public funds or to maintain the fiscal integrity of the program.

996.28 Any provider agreement for DMEPOS in existence on or before May 30, 2008 shall expire on December 31, 2009, unless the provider agreement for DMEPOS contains an expiration date on or before January 1, 2010. Any provider of DMEPOS whose provider agreement expires on or before January 1, 2010 is eligible to submit a new provider agreement pursuant to the rules specified in Section 996 of Chapter 9 of Title 29 of the D.C. Municipal Regulations.

Add the following definitions to section 999.1

999.1 DEFINITIONS

Beneficiary – Any individual who has been designated as eligible to receive or who receives any item or service under the D.C. Medicaid program.

Department of Health Care Finance – The executive department responsible for administering the Medicaid program within the District of Columbia effective October 1, 2008.

DHCF – Department of Health Care Finance

Delete the current definition for Medical Assistance Administration in section 999.1 and replace it with the following definition:

999.1 DEFINITIONS

Medical Assistance Administration – The administration within the Department of Health responsible for administering the Medicaid program within the District of Columbia until October 1, 2008.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

GAS TARIFF 00-2, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S RIGHTS-OF-WAY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No.3

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to its authority under D.C. Official Code § 2-505,[1] hereby gives notice of its final rulemaking action taken in the above-captioned proceeding. On July 21, 2009, the Commission released Order No. 15334, approving Washington Gas Light Company's ("WGL")[2] Application for an updated Rights-of-Way ("ROW") Surcharge.

2. The ROW Surcharge contains two components, the ROW Current Factor and the ROW Reconciliation Factor. On March 26, 2009, pursuant to D.C. Official Code Section 10-1141.06,[3] WGL filed with the Commission the ROW Current Factor.[4] In the tariff filing, WGL sets forth the process used to recover from its customers the D.C. Public ROW fees paid by WGL to the District of Columbia government in accordance with the following tariff page:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
Section 22
3rd Revised Page 56

3. WGL asserts that its tariff amendment would become effective commencing with the April 2009 billing cycle.[5] Based on our review of the Tariff Application, the Commission finds that WGL's calculations for the ROW Current Factor comply with General Services Tariff, P.S.C. No. 3, Section 22, 3rd Revised Page No. 56. However, if the Commission discovers any inaccuracies, WGL may be subject to reconciliation of the surcharges.

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1 D.C. Official Code § 2-505 (2001 Ed.).

2 *GT00-2, In The Matter Of Washington Gas Light Company's Rights-Of-Way Surcharge General Regulations Tariff, P.S.C.-D.C. No. 3*, ("*GT00-2*") Rights of Way Current Factor Surcharge Filing of Washington Gas Light Company, ("Tariff Application"), filed March 26, 2009.

3 D.C. OFFICIAL CODE § 10-1141.06 (2001 Ed.) states that "Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

4 *GT00-2*, Tariff Application at 1.

5 *GT00-2*, Tariff Application at 2.

4. A Notice of Proposed Rulemaking regarding WGL's Surcharge Filing was published in the *D.C. Register* on April 24, 2009.[6] No comments were filed in response to the filing. Subsequently, the Commission approved WGL's Surcharge Filing by Order No. 15334.

[6] 56 D.C. Reg. 3187-3188 (April 24, 2009).